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No. 89-1242
3JOSEPH F. SPANIOL, JR.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

ABORTION RIGHTS MOBILIZATION, INC., *et al.*,
Petitioners,
v.

UNITED STATES CATHOLIC CONFERENCE, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

BRIEF *AMICUS CURIAE* OF
POPULATION PLANNING ASSOCIATES, INC.,
THE NATIONAL ABORTION RIGHTS ACTION LEAGUE,
AND THE WOMEN'S LEGAL DEFENSE FUND,
IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI¹

Population Planning Associates, Inc. ("PPA") is a nonprofit organization which receives a tax exemption from the Internal Revenue Service ("IRS") under 26 U.S.C. § 501(c)(3), and is eligible to receive tax-

¹ Letters of consent pursuant to Supreme Court Rule 37.2 have been filed with the Clerk of the Court.

deductible contributions. The purposes of PPA are to provide educational support, training, counseling and technical services worldwide for population control and to assist in the dissemination of information on birth control and women's rights. PPA is dedicated to promoting public awareness of, and ensuring a woman's individual right to choose to have a legal abortion.

The National Abortion Rights Action League ("NARAL") has over 400,000 members in 40 state affiliates and the national organization. Founded in 1969, NARAL is the largest national organization dedicated solely to keeping abortion safe, legal and accessible. NARAL is exempt from federal income tax pursuant to 26 U.S.C. § 501(c)(4) of the Internal Revenue Code, but is not eligible to receive tax-deductible contributions.

In order to raise tax-deductible charitable contributions, NARAL has established the NARAL Foundation, a nonprofit organization which engages in public education on reproductive health policy, and specifically on the importance to women of safe, legal, and accessible abortion services. The NARAL Foundation is tax-exempt under § 501(c)(3).

The Women's Legal Defense Fund ("WLDF") is a § 501(c)(3) nonprofit membership organization founded in 1971 to challenge sex-discrimination and to advance women's rights through the legal system. WLDF has worked extensively on issues of reproductive rights and has filed numerous *amicus* briefs on these issues.

Essential to their existence, *amici* must subsist on tax-deductible donations or government grants (PPA, NARAL Foundation and WLDF) and non-tax deductible donations (NARAL). In return for their tax exemptions, PPA, NARAL Foundation and WLDF must and do refrain from any attempts to electioneer, because Congress has expressly prohibited 501(c)(3) organizations from supporting political candidates. 26 U.S.C.

§ 501(c)(3). Nevertheless, given their organizational purposes, PPA, NARAL, NARAL Foundation and WLDF are deeply interested in the outcome of the national debate on abortion, which will directly affect their interests.

Amici believe that if the facts alleged in the complaint are true,² the Court of Appeals' decision in this case inappropriately permits the IRS—in contravention of the will of Congress—to influence the political process by providing tax subsidies to nonprofit organizations that violate their § 501(c)(3) status through electioneering activities. Failure to enforce the laws against respondents United States Catholic Conference (“USCC”) and National Conference of Catholic Bishops (“NCCB”—or against *any* § 501(c)(3) entity that supports political candidates—creates an unfair advantage in the political arena. This unfair advantage causes a fundamental and palpable injury to *amici* and petitioners, who are shackled by the very laws the IRS refuses to enforce against others.

By subsidizing one potent political force, the federal government diminishes the effectiveness of that force’s competitors in the political marketplace. In the context of the political process, that result is the essence of “injury in fact.” *Amici* and petitioners suffer that injury.

Amici will make three arguments in support of *certiorari* that petitioners have not emphasized. First, *amici* will show that the question transcends the abortion rights context from which it arises, and is important to everyone who values a free political marketplace, because it threatens to undermine the principle of government neutrality on which all of our political institutions rest.

² At this stage, of course, the Court must accept petitioners’ allegations as true and draw all inferences in their favor. See *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

When the Executive Branch intercedes in the political marketplace to subsidize one political view that is competing for public approval with other political views, proponents of those other political views are disadvantaged, and the entire political system is distorted.

Second, *amici* will bring to the Court's attention a decision of this Court not previously cited by petitioners, *Arkansas Writers' Project, Inc. v. Ragland*, 107 S.Ct. 1722 (1987), which supports standing in the circumstances of this case.

Third, *amici* will argue that because the Court has recently granted review in another case involving the constitutional requirements for establishing injury in fact, *Lujan v. National Wildlife Fed'n*, 110 S.Ct. 834 (1990), granting review in this case would enable the Court to consider that question in two quite different contexts, and would thereby facilitate the establishment of neutral principles that will help lower courts resolve standing issues in a broad range of contexts.

INTRODUCTION AND SUMMARY OF ARGUMENT

Point I. This case presents an issue of national significance that far transcends the abortion rights context in which it arises. Of course the issue is of surpassing importance to the parties and to the millions of Americans who are deeply committed to pro-choice or anti-abortion positions. But the intensely charged context in which this issue arises should not obscure the fact that the issue is also of concern to every American who values governmental neutrality in political campaigns, or in the political marketplace. Analytically, the same standing issue presented by the facts of this case will arise whenever government uses tax subsidies to favor one political view at the expense of another. In each of those situations, the question will be whether governmental subsidy for a particular political view causes sufficient injury in

fact to proponents of opposing views to give them standing to question the legality of that subsidy.

Amici will show that the question presented by this case is not at all fact bound, or of interest only to the abortion controversy. Resolution of this question will directly and vitally affect standing to challenge a broad range of governmental subsidies that are allegedly motivated by racial, political, religious, or other impermissible governmental motives.

Point II. *Amici* will elaborate on a point made only briefly by petitioners: the question of standing is obviously worthy of review because the Court has previously granted review of that question in this very case.

Point III. *Amici* will raise a point not raised by petitioners: The Court has recently recognized that the constitutional requirements for establishing "injury in fact" merit review by granting certiorari in another case raising that question in the context of environmental litigation. *Lujan v. National Wildlife Fed'n*, 110 S.Ct. 834 (1990). Granting review in this case would enable the Court to consider the same question from quite different perspectives, and would for that reason facilitate establishment of neutral principles that will help lower courts resolve standing questions in a broad range of circumstances.

ARGUMENT

I. THE PETITION PRESENTS A STANDING QUESTION OF NATIONWIDE IMPORTANCE THAT TRANSCENDS THE ABORTION CONTROVERSY.

The following hypothetical but directly analogous situations illustrate the range of circumstances in which this standing question could arise. First, the IRS purposefully allows a § 501(c)(3) organization to use tax-deductible contributions to campaign for political candidates who support a constitutional amendment permitting racial segregation of public schools. Would the NAACP, or other 501(c)(3) organizations who favor desegregation, have standing to challenge that subsidy? Under the Second Circuit's rationale, they would not. Second, the IRS purposefully allows a § 501(c)(3) liberal "think tank" to use tax-deductible contributions to campaign for political candidates who favor socialism and expansion of the welfare state. Would conservative think tanks, or other 501(c)(3) organizations who favor less government, rather than more, have standing to challenge that subsidy? Under the Second Circuit's rationale, they would not. Third, the IRS purposefully allows a § 501(c)(3) secular humanist organization to use tax-deductible contributions to campaign for political candidates who support a constitutional amendment outlawing religions other than secular humanism. Would respondents USCC or NCCB, or other 501(c)(3) organizations who oppose establishment of a state religion, have standing to challenge that subsidy? Under the Second Circuit's rationale, they would not.

These examples illustrate that the standing issue presented by this case is not at all fact bound, or of importance only to the abortion controversy. Every individual and every organization engaged in debate in the political marketplace is at risk that this administration, or a future administration, will skew the outcome of that debate by subsidizing the views of their political opponents. A

standing ruling that today subjects practices of respondents USCC and NCCB to scrutiny could tomorrow be their protector; a standing ruling that today insulates practices of respondents USCC and NCCB from scrutiny could tomorrow be their destruction.

It is not mere rhetoric to suggest that the principle of governmental neutrality in political campaigns is essential to our democratic institutions. Government exists to *serve* the political will of the people, not to shape it. For this reason, standing doctrines should be construed as liberally as the constitution will permit when citizens allege that government is illegally subsidizing the campaigns of their political opponents. Types and degrees of injury that might not qualify as "injury in fact" in less important contexts might nevertheless qualify when the complaint is that the electoral process has itself been skewed by illegal governmental conduct. See, e.g., *Arkansas Writers' Project, Inc. v. Ragland*, 107 S.Ct. 1722 (1987).³ Petitioners contend, and *amici* agree, that their injury qualifies as injury in fact under *current* standing doctrines. But even if that were demonstrably not so, petitioners' complaint alleges governmental wrongdoing so destructive of our political institutions that the Court should grant review to determine whether the constitution would permit less restrictive standing doctrines for cases such as this.

This is a good case for the Court to consider the type and degree of "injury in fact" that is required for stand-

³ In that case, even though Justice Scalia and Chief Justice Rehnquist dissented from the majority's conclusion that plaintiffs had standing to challenge a tax exemption that subsidized others, and were entitled to prevail on their First Amendment claims, they noted that they might reach a different conclusion in a case where, as here, "the subsidy pertains to the expression of a particular viewpoint on a matter of *political concern . . .*" 107 S.Ct. at 1731 (Scalia, J., and Rehnquist, C.J., dissenting) (emphasis added). In that circumstance, they noted, it might be "appropriate" to accord "special protection" to "political speech." *Id.*

ing under Article III. At this stage of the litigation, the factual allegations are not in dispute. And petitioners clearly satisfy all of the other Article III requirements for standing. It is clear, for example, that if their injury is sufficient to constitute "injury in fact," that injury is "fairly traceable" to governmental wrongdoing, and could be "redressed" through injunctive relief courts could easily fashion.*

Distinct and palpable injury is suffered when the IRS subsidizes one political view at the expense of another opposing political view. In essence, the IRS is aiding political candidates who espouse positions favored by the current administration. This is how it works:

Congress has authorized § 501(c)(3) organizations that comply with statutory requirements to receive tax exemptions, and has further authorized tax deductions for contributions to such organizations. The tax exemptions and tax deductions are "a form of subsidy" that "has much the same effect as a cash grant to the organization . . ." *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544 (1983). When this tax subsidy scheme is manipulated by the IRS so that organizations favoring one political view are permitted to engage in

* The District Court found that petitioners "clearly satisfy the second and third aspects of the Article III standing test—causation and redressability," *Abortion Rights Mobilization, Inc. v. Regan*, 544 F. Supp. 471, 480 (S.D.N.Y. 1982). Those findings were clearly correct. Petitioners request an order directing the IRS to cancel the tax-exempt status of respondents USCC and NCCB. Should petitioners prove their allegations, that relief would be within the power of the courts to grant and would eliminate the alleged wrongdoing. Lesser remedies would also be possible. The IRS could be ordered, for example, to enforce all provisions of the Internal Revenue Code equally against respondents USCC and NCCB. It is not necessary at this stage, however, to determine what relief would be appropriate, or, indeed, whether any relief would be appropriate. For present purposes it is sufficient that if wrongdoing is proved, courts could devise remedial orders that would end the wrongdoing.

electioneering activities, while other similarly situated organizations who favor a different political view are precluded from doing so, then the federal government has become a "player" in the electoral process.

The practical effect is that there is no difference between the tax subsidy scheme at issue in this case and a direct federal grant to favored political candidates. With a direct federal grant, candidate A, whose platform endorses the criminalization of abortion, would have a distinct advantage over nonfunded candidate B, whose platform supports pro-choice positions.

This example is no different from the situation alleged in this case. By failing to enforce the Internal Revenue Code, the federal government permits respondents USCC and NCCB to use tax-deductible dollars to finance their anti-abortion electoral activities. This direct government subsidy of partisan political campaigns places *amici* and petitioners at a distinct disadvantage; in effect, the federal government subsidizes the competitive advocacy of *amici's* ideological and political opponents. The result is that *amici* and petitioners no longer participate in a fair and balanced political process.

The situation would be no different if the federal government granted tax deductions for political contributions to candidates who support anti-abortion positions, but denied tax exemptions to those who contributed to candidates with opposing points of view. Indeed, that is the effect of the alleged scheme. If a citizen named Mr. Anti Choice wanted to finance the political campaign of candidate A, who opposes abortion, he could do so directly, or through a contribution to respondents USCC and NCCB. If Mr. Anti Choice directly gave \$1,000 to candidate A's campaign, that contribution would not be tax deductible and would actually cost Mr. Anti Choice \$1,000 in after-tax dollars. But if Mr. Anti Choice gave the same \$1,000 to respondents USCC and NCCB—to be used by them to

support A's campaign—that contribution would be tax deductible and would actually cost Mr. Anti Choice perhaps \$750 in after-tax dollars. Thus, Mr. Anti Choice could contribute *more* than \$1,000 to respondents USCC and NCCB, and still be better off in after-tax dollars than if he had contributed \$1,000 directly to candidate A, and respondents USCC and NCCB could contribute \$1,000 of that larger contribution to candidate A, and keep the balance for themselves. Thus, as allegedly administered by the IRS, the tax laws make it easier to raise money for the political campaigns of candidates who oppose abortion, and for the coffers of organizations who support such candidates.

Conversely, if a citizen named Mr. Pro Choice would like to finance the political campaign of candidate B, who supports the right to abortion, he could *only* do so directly. A contribution by him to 501(c)(3) organizations that favor abortion would not be passed on to candidate B. Thus, as allegedly administered by the IRS, the tax laws make it comparatively harder to raise money for the political campaigns of candidates who support abortion, and for organizations who favor such candidates.

In these circumstances, the cases cited by petitioners support their standing to question a tax subsidy for their political opponents.

In addition to the cases cited by petitioners, another decision of this Court that supports standing in this case is *Arkansas Writers' Project, Inc. v. Ragland*, 107 S.Ct. 1722 (1987). Indeed, in some respects, the standing of the plaintiffs in this case follows *a fortiori* from the standing of the plaintiffs in that case. In *Ragland*, plaintiff magazines challenged a tax exemption for other magazines which, they alleged, constituted a governmental subsidy of those other magazines. In that respect, *Ragland* and this case are similar. However, there is an important distinction between *Ragland* and this case, a distinction that was crucial to the dissent in *Ragland*, and that cuts

in favor of standing here. The plaintiffs in *Ragland*, unlike the plaintiffs here, did not contend that the exemption was politically motivated, or that the "exemption . . . is . . . available only to [organizations] that take a particular point of view on a controversial issue . . ." 107 S.Ct. at 1731 (Scalia, J., and Rehnquist, C.J., dissenting). Furthermore, the plaintiffs in *Ragland*, unlike the plaintiffs here, did not contend that they directly competed with the exempt magazines (either for acceptance of their political views or for subscribers).

Nevertheless, even though the exemption at issue in *Ragland* was not politically motivated, and even though the plaintiff magazines were not direct competitors of the exempt magazines, seven justices had no difficulty concluding that the plaintiff magazines had alleged a "sufficient personal stake in the outcome of this litigation" to warrant standing. *Id.* at 1726. Standing for these plaintiffs should follow *a fortiori*.

Although Justice Scalia and Chief Justice Rehnquist dissented, their dissent focused exclusively on the merits, and it is not clear whether they disagreed with the majority's conclusion that plaintiffs had standing. Indeed, their dissent suggests they would have found standing if the government had "manipulated" the "subsidy scheme," or if the scheme "was meant to inhibit" the viewpoints of non-exempt magazines; in those circumstances, "the courts will be available to provide relief." *Id.* at 1731 (Scalia, J., and Rehnquist, C.J., dissenting).

Justice Scalia and Chief Justice Rehnquist dissented (on the merits, at least) precisely because the plaintiffs in *Ragland*, unlike the plaintiffs here, had not alleged that the subsidy scheme was politically motivated and designed to favor particular political views:

Perhaps a more stringent, prophylactic rule is appropriate, and can consistently be applied, when the

subsidy pertains to the expression of a particular viewpoint on a matter of political concern—a tax exemption, for example, that is expressly available only to publications that take a particular point of view on a controversial issue of foreign policy. Political speech has been accorded special protection elsewhere. . . . There is no need, however, and it is realistically quite impossible, to extend to all speech the same degree of protection against exclusion from a subsidy that one might think appropriate for opposing shades of political expression.

Id. at 1731, 1732 (Scalia, J., and Rehnquist, C.J., dissenting) (citations omitted).

There is another distinction between *Ragland* and this case, but it is a distinction of form rather than of substance, and it also cuts in favor of standing, not against. In *Ragland*, the tax statute expressly exempted certain magazines from a general tax. Thus, the legislature had decided the exemption would be appropriate, and judicial review would pose the possibility of undermining that legislative judgment. The Court nevertheless found standing, and struck down that legislative judgment. Here, the tax statute expressly *denies* exemption to organizations that use tax-deductible contributions to support political campaigns. Thus, Congress has decided that tax exemption in those circumstances would *not* be appropriate; accordingly, judicial review here would not pose the possibility of undermining that legislative judgment. To the contrary, judicial enforcement of that clear statutory prohibition would implement the will of Congress. The problem in this case, of course, is that the Executive Branch has allegedly ignored the will of Congress and has granted, in effect if not in form, the very exemption from taxation for organizations that support particular political candidates Congress meant to deny.

In our system of checks and balances, courts must be respectful of the judgments of both the legislative and

executive branches. But greater deference is due the judgments of the Legislative Branch, particularly where, as here, executive branch actions are directly contrary to clear Congressional commands. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring) ("With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up.") (footnote omitted).

Respondents might argue that petitioners should seek relief from Congress, rather than from the courts. But that could be argued in every case in which the Executive Branch violates the will of Congress. In all such cases, Congress would at least theoretically have the power, through denial of appropriations, etc., to enforce its will. Where, as here, the Congressional command is clear, it would be an abdication of judicial responsibility to force Congress to spend the time and energy that would be necessary for it to enforce its will. Our system of checks and balances does not have an institutional preference for disputes between the legislative and executive branches to be resolved by those branches alone. To the contrary, precisely because judicial review would avoid friction between those branches, judicial review is particularly appropriate when the Executive Branch is allegedly violating a clear Congressional command. *See, e.g., National Council of Community Mental Health Centers, Inc. v. Weinberger*, 361 F. Supp. 897, 900 (D.D.C. 1973) (it is "for the courts to interpret the law" when the President impounds funds Congressionally authorized to be spent).

II. IN EARLIER PROCEEDINGS IN THIS CASE, THE COURT HAS FOUND THE SAME STANDING QUESTION RAISED BY THIS PETITION TO BE WORTHY OF REVIEW.

It is clear this case raises a question that is appropriate for review because the Court has previously granted review of that question, in this very case. *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 56 U.S.L.W. 3395 (U.S. Dec. 8, 1987) (No. 87-416). Although the question was not resolved when this case was formerly before the Court, there have been no doctrinal clarifications that make the question any less important today than it was in 1987, when the Court granted review of that question. To the contrary, the "injury in fact" requirement of Article III has continued to spawn considerable confusion.

In May 1986, respondents USCC and NCCB were found in contempt for refusal to respond to court-ordered discovery as non-party witnesses in this case.⁵ See *Abortion Rights Mobilization, Inc. v. Baker*, 110 F.R.D. 337 (S.D.N.Y. 1986), *aff'd sub nom. In Re United States Catholic Conference*, 824 F.2d 156 (2d.Cir. 1987), *cert. granted sub nom. United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 108 S.Ct. 484, *rev'd*,

⁵ In 1981, petitioners filed an amended complaint seeking declarations that the federal government had violated § 501(c)(3) of the Internal Revenue Code and the Establishment Clause of the First Amendment of the Constitution, and injunctive relief to compel the government to enforce the Code and the Constitution and to revoke the tax exemption for respondents USCC and NCCB. Following defendants' motion to dismiss for lack of standing, *inter alia*, the district court held that the clergy and voter plaintiffs had standing, but dismissed the complaint against respondents USCC and NCCB. See *Abortion Rights Mobilization, Inc. v. Regan*, 544 F. Supp. 471 (S.D.N.Y. 1982). On a renewed motion to dismiss for lack of subject matter jurisdiction in light of *Allen v. Wright*, 468 U.S. 737 (1984), the district court reiterated its original holding. See *Abortion Rights Mobilization, Inc. v. Regan*, 603 F. Supp. 970 (S.D.N.Y. 1985).

108 S.Ct. 2268 (1988). They "challenge[d] the contempt adjudication *solely* on the ground that the plaintiffs lack standing to bring the lawsuit." *In Re United States Catholic Conference*, 824 F.2d 156, 158 (2d Cir. 1987) (emphasis added); *id.* at 166. The Second Circuit ruled that respondents USCC and NCCB did not have standing to challenge the contempt citation, because the standing of the *plaintiffs* was at least "colorable," and third-party witnesses can challenge contempt adjudications "only on the limited ground that the District Court lacks even colorable jurisdiction over the underlying lawsuit." *Id.* at 165.

Respondents USCC and NCCB petitioned for certiorari and the Court granted certiorari, without restriction, on two questions. 108 S.Ct. 484 (1987). The first question was whether non-party witnesses can challenge contempt citations on the ground that the district court lacked actual jurisdiction, even if it did have colorable jurisdiction. The second question was "[W]hether private parties [*i.e.*, the plaintiffs in this case] have Article III standing to compel IRS to exercise its discretion to investigate complaints of impermissible political campaign activity by, and to revoke the tax-exempt status of, numerous religious organizations?" *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 56 U.S.L.W. 3395 (U.S. Dec. 8, 1987) (No. 87-416). The second question, of course, is the question now raised again by this petition.

The Court resolved question one, and ruled that a non-party witness cited for contempt does have standing to challenge the actual standing of the plaintiffs to sue in the undelying litigation, even when the standing of those plaintiffs is at least "colorable." *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 108 S.Ct. 2268 (1988). The Court did not resolve question two. The Court expressly acknowledged that the standing of these petitioners to sue is at least "colorable," *id.* at 2269, but remanded in order to allow the Second

Circuit an opportunity to determine whether these petitioners did in fact have standing. *Id.* at 2273.

The Second Circuit subsequently decided the standing question this Court considered, but remanded, and ruled that petitioners do *not* have standing.

The Court's recognition that petitioners' standing is at least "colorable" shows that this question is not frivolous. The Court's previous unrestricted grant of review of this same question shows that this question is an important question that should be decided. The lower courts have now had an opportunity to consider the question, and the record is complete.⁶ The question is as important today as it was when the Court granted review in 1987. Accordingly, the Court should again grant review of this important question.

III. THE COURT HAS RECENTLY GRANTED REVIEW IN ANOTHER CASE INVOLVING THE CONSTITUTIONAL REQUIREMENTS FOR ESTABLISHING INJURY IN FACT, WHICH DEMONSTRATES THE IMPORTANCE OF THE QUESTION.

On January 16, 1990 the Court granted review in *Lujan v. National Wildlife Fed'n*, 110 S. Ct. 834 (1990). Although *Lujan* arises in the context of environmental litigation and is in other respects dissimilar from this case, in both cases the central question is whether the plaintiffs have shown sufficient injury in fact to constitute standing under Article III.⁷

Lower courts have had difficulty understanding the test for determining whether plaintiffs have demonstrated suf-

⁶ See *Abortion Rights Mobilization, Inc. v. Regan*, 544 F. Supp. 471 (S.D.N.Y. 1982); *Abortion Rights Mobilization, Inc. v. Regan*, 603 F. Supp. 970 (S.D.N.Y. 1985); *In re United States Catholic Conference*, 885 F.2d 1020 (2d Cir. 1989).

⁷ In that case, as here, the federal government contends that the allegations of the complaint do not demonstrate "injury-in-fact." Petition at 23.

ficient injury in fact to warrant standing. *See, e.g., Dellioms v. Nuclear Regulatory Comm'n*, 863 F.2d 968, 971 (D.C. Cir. 1988) ("the guidance discernible from decisions of the Supreme Court on standing is less than pellucid"). Indeed, this Court has acknowledged that injury in fact requirements are not easy to articulate or apply. *See, e.g., Allen v. Wright*, 468 U.S. 737, 751 (1984) ("the constitutional component of standing doctrine incorporates concepts concededly not susceptible of precise definition"). It was no doubt in part to provide guidance to lower courts and litigants in this important but uncertain area of the law that the Court granted review in *Lujan*.

Justice O'Connor has observed that the "standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases." *Allen v. Wright*, 468 U.S. at 751-52. Granting review in this case of the injury in fact question now pending before the Court in *Lujan* would permit such comparison and would facilitate the search for neutral and understandable principles lower courts could meaningfully apply. Accordingly, *amici* urge the Court to grant review of this petition.⁸

CONCLUSION

The complaint alleges an egregious example of direct government subsidies causing injury by unfairly distorting the electoral process. By creating an uneven playing field upon which *amici* and petitioners are forced to compete with respondents, the IRS has caused them to sustain a distinct and palpable injury to themselves, and more profoundly, to the democratic process itself. The Court should grant the petition to resolve this issue of standing and to uphold petitioners' right to seek redress for their injury.

⁸ In the alternative, *amici* urge the Court to hold the petition in this case pending resolution of *Lujan*, for whatever disposition may then be appropriate.

For all the foregoing reasons, and for those set forth in the petition for certiorari, the petition for certiorari should be granted.

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